Enforced Disappearance in Africa:

BASELINE STUDY FOR SUDAN
SEPTEMBER 2020
ABOUT ACJPS

African Centre for Justice and Peace Studies (ACJPS) is dedicated to creating a Sudan committed to all human rights, the rule of law and peace, in which the rights and freedoms of the individual are honoured and where all persons and groups are granted their rights to non-discrimination, equality and justice. Since its inception in 2009 ACJPS has performed vital human rights monitoring and protection functions and has built a solid reputation for the credibility, impartiality and professionalism of its work. ACJPS has also played a vital role in providing technical support and training to new civil society organisations and informal activist networks. The expulsions and suspensions of international and national civil society groups in Sudan after the March 2009 decision by the International Criminal Court (ICC) to issue an arrest warrant for President al-Bashir severely curtailed the ability of groups within Sudan to openly monitor the human rights situation in the country. However, through the expertise of our staff and their networks throughout Sudan, ACJPS is uniquely positioned to conduct monitoring, legal, and advocacy functions. ACJPS works with dedicated networks and partners inside and outside Sudan to achieve its goals, build alliances and strengthen the impact of its work. Through the expertise of our staff and networks, ACJPS is uniquely positioned to monitor and strengthen respect for human rights in Sudan.

ABOUT THE ENFORCED DISAPPEARANCES IN AFRICA PROJECT

This report is part of a joint project by ACJPS, Lawyers for Justice in Libya, MENA Rights Group, Zimbabwe Lawyers for Human Rights and REDRESS to end Enforced Disappearances in Africa. The project supports human rights lawyers and victims’ groups to bring cases challenging enforced disappearances. It seeks to empower victims to speak about their own experiences, set up victims’ networks and advocate for justice on their own behalf. It raises awareness around this issue with the African Union, relevant UN bodies and specific governments. It promotes coordination with the African Commission on Human and People’s Rights to strengthen the regional legal framework to eradicate the practice of enforced disappearance on the continent. This report was prepared by Amir Suleiman, Legal Program Director, and Lillian Ajok, the legal program Assistant, at the ACJPS. The report was reviewed by the following staff in REDRESS: Eva Nudd, Legal Advisor, Alejandra Vicente, Head of Law, and interns and fellows: Ana Cutts Dougherty, Ludivine Penchette and Shemia Khalid.
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<tr>
<td>ACHPR:</td>
<td>African Commission on Human and Peoples’ Rights</td>
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<td>ACJPS:</td>
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<td>Banjul Charter:</td>
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<td>CPA:</td>
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<td>ECHR:</td>
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<td>JEM:</td>
<td>Justice and Equality Movement</td>
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<td>NISS:</td>
<td>National Intelligence and Security Service</td>
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<td>NSA:</td>
<td>National Security Act 2010</td>
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<td>RSF:</td>
<td>Rapid Support Forces</td>
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<td>SCP:</td>
<td>Sudan Congress Party</td>
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<td>SPLA:</td>
<td>Sudanese People’s Liberation Army</td>
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<td>UNCAT:</td>
<td>UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment</td>
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<td>UPR:</td>
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1. Executive Summary

Enforced disappearance is a heinous crime that deprives individuals of their liberty, puts them outside the law without access to a lawyer or their families. The government denies that it has the individual in custody, leaving families in despair and without any news on their loved ones. In Sudan, different governments have deployed this practice for decades to suppress political opposition and instil fear in the population as a means of maintaining power.

During the era under former President Omar Al-Bashir, no one was free from the wrath of the government. Political opposition leaders and human rights defenders were forcibly disappeared for simply exercising their right to speak. Civilians living in Darfur and South Kordofan became victims of enforced disappearances by allegedly supporting the rebels fighting against the government during the various civil wars. Throughout the years protesters became victims of enforced disappearances in Sudan for demanding changes and accountability from the government. The most recent uprising that resulted in Al-Bashir’s ousting also led to several dozen protesters disappearing during the protests in Khartoum. Many remain missing.

In Sudan, like many other African countries, it is hard to find accurate data on the victims of enforced disappearance since the government denies the use of this practice and therefore keeps no official information on the victims. The data gathered by the UN Working Group on Enforced or Involuntary Disappearances (UN WGEID) shows that over a period of four decades it has received only 394 complaints from families and victims in Sudan. This shows enforced disappearances are largely underreported.

While the magnitude of the problem is not known in Sudan, it is clear that victims seeking truth, justice and reparations experience significant difficulties in doing so. The Sudanese law does not criminalise enforced disappearances. The immunities enshrined in the law prevent the perpetrators, including the police, National Intelligence and Security Service (NISS) employees and the military, from being held accountable for violations of human rights. While Sudanese laws provide for some procedural protections to prevent enforced disappearances -such as access to a lawyer for detained people and bringing the accused before the judge within a reasonable period of time- in practice these procedural safeguards are often disregarded.
In 2020, the Transitional Military government introduced some legal reforms that prohibit torture of an accused person and recognise that torture can be committed both physically and psychologically. Further, the amendments repealed articles of the National Security Act that provided for immunity of NISS perpetrators. While these measures are a step in the right direction, the Sudanese government has yet to ratify the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment (UNCAT), the International Convention on the Protection of all Persons from Enforced Disappearances (ICPPED), and to criminalise enforced disappearance. The new government should also fully remove immunities that prevent the investigation and prosecution of the police and military. Finally, though the Sudanese government set up two commissions in 2019 whose mandates include enforced disappearances, these commissions have yet to properly investigate enforced disappearances or provide recommendations on investigation, prosecution and reparations for victims of this heinous crime.

2. Overview of the Political and Human Rights Context in which Enforced Disappearance Takes Place in Sudan

Sudan is the third largest country in Africa and has a population of almost 42 million people. The majority of the population is Muslim (97%), and 3 percent are animist and Christian although that percentage is disputed.\(^1\) The population is made up of more than 300 tribes, mostly Arabs in the north and Africans in the south. The country gained its independence from Great Britain in 1956 and tensions between north and south soon boiled over into a civil war.\(^2\) Following the civil war and several military coups, Omar Al-Bashir assumed power in Sudan in 1989.

The period of Al-Bashir’s government was marked with several civil wars and uprising of ethnic minorities against the oppressive regime in Khartoum. In 2003, the Sudan Liberation Movement and Justice Equality Movement, rebel groups in Darfur, began a rebellion against the Sudanese government whom they accused of discriminatory practices and oppression of the non-Arab population. The government responded with an ethnic cleansing campaign resulting in thousands of people in Darfur being killed, attacked or displaced.\(^3\) On 31 March 2005, the United Nations Security Council referred the situation of Darfur to the International

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\(^2\) Coalition for the international criminal court, available at, [http://www.coalitionfortheicc.org/country/sudan](http://www.coalitionfortheicc.org/country/sudan)

Criminal Court (ICC). The ICC indicted President Al-Bashir and several other government officials, charging them with war crimes, crimes against humanity, and genocide.

Beside the war in Darfur, the Sudanese government engaged in a war in the South, pitting Christians in the South against the predominantly Muslim population in the North. Following a bloody war in 2005, a referendum was held in early 2011 to determine whether South Sudan should break away from Sudan. The overwhelming majority voted to secede, and South Sudan became a new country on 9 July 2011.

The ongoing civil wars throughout the country and the oppression of non-Arabic minorities weakened the regime, eventually resulting in severe economic problems. In December 2018, after the government increased the price of bread three-fold, massive protests erupted across the country. These protests expanded and became known as the “Sudanese Uprising” uniting citizens over lack of good governance, authoritarian rule, and human rights violations in Sudan. The protests were met with a violent response from the government, and within the first five days 37 protesters were killed.

On the night of 10 April 2019, the protests led to the ouster of President Omar Al-Bashir and the installation of a Transitional Military Council (TMC). The TMC replaced Al-Bashir State authorities and has continued to perpetrate human rights violations. On 3 June 2019, the Rapid Support Forces used gun fire and tear gas to disperse the peaceful sit-in protesters in Khartoum. The violent dispersal led to the killing of more than 100 people, the alleged rape

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8 Ibid.

oppressive methods which silence the political opposition and the minority groups fighting for their rights across the country.

The security apparatus used torture to instil fear in the population and stifle political opponents, students and journalists demanding change in Sudan. The United Nations Special Rapporteur on Torture highlighted the prevalence of the use of torture, expressing concerns over reports of widespread use of this practice against Sudanese citizens, noting with particular concern the reports of police brutality against vulnerable, disadvantaged groups and minorities.\textsuperscript{16} Further, the UN Human Rights Committee expressed concerns about the prevalence of torture, urging the government of Sudan to adopt comprehensive legislation to ban torture and provide for appropriate punishment.\textsuperscript{17} In July 2020, the newly installed government adopted several amendments, including revising a provision that prohibits torture of an accused person. It also amended the provision criminalising torture by a public official to recognise that torture can be inflicted physically and psychologically and to increase the penalties from three months to three years.\textsuperscript{18} However, while these changes are steps in the right direction, the definition of torture under Sudanese law still does not comply with the definition under international law and Sudan has yet to ratify the UNCAT.

While Sudan is a party to several international instruments that protect the right to assembly, freedom of expression and association, State authorities have systematically violated these rights. Journalists and human rights defenders have regularly been detained or threatened for doing their work. Amnesty International documented the arrest and detention of at least 15 journalists between January and October 2018 by the National Intelligence and Security Service (NISS). In addition, the entire print run of 10 newspapers was confiscated on at least 27 occasions.\textsuperscript{19} In recent years, the government imposed more restrictions on civic spaces through the arrest of human rights defenders and political activists, the closure and confiscation of newspapers, and travel bans on journalists and the revocation of their licences.\textsuperscript{20} Further, Article 127 and Article 124 of Sudan’s Criminal Procedure Act of 1991 give

\textsuperscript{16} REDRESS, \textit{Human Rights Concerns and Barriers to Justice in Sudan: National, Regional and International Perspectives}. February 2014, p. 20.

\textsuperscript{17} Human Rights Committee, Concluding Observations on the Fifth Periodic report of the Sudan, CCPR/C/SDN/CO/5, para. 33.


\textsuperscript{20} Human Rights Committee, Concluding Observations on the Fifth Periodic report of the Sudan, CCPR/C/SDN/CO/5, para. 45.
the authorities power to issue orders preventing or restricting any meeting that may disturb public order and allow a police officer or prosecutor the power to order the dispersal of any gathering that is likely to result in a disturbance of public peace. The Sudanese authorities have repeatedly used this law to prevent any public gatherings and have used force to disperse the crowds. In 2013, when the government announced the end of subsidies for fuel and other necessities, the population took to the streets only to be met with oppression: many protesters were injured or killed. Similarly, in 2019, during the uprising that led to the downfall of Omar Al-Bashir, the security forces resorted to violence against protesters. During the June 3 peaceful demonstrations, the Rapid Service Forces attacked the protesters, killing scores, raping people, and injuring several hundred.

4. Enforced Disappearances in Sudan

Enforced disappearance is defined as the “arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.” The government of Sudan has used enforced disappearances for decades against its political opponents, to silence the marginalised communities, and in general to exert control over society.

While the government of Sudan has resorted to enforced disappearances, the true magnitude of this practice is difficult to assess for several reasons. First, like in many other countries, the crime of enforced disappearance is often misunderstood, which contributes to its underreporting and deficient documentation. While NGOs and different UN bodies have reported on thousands of disappeared, 20 people were documented by the missing initiative. The 2019 report by the UNWGGEID notes that since 1980 only 394 cases of ED have been reported from Sudan and only 37 were related to women. Second, there is an absolute lack

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23 Human Rights Watch, *They were shouting ‘Kill them’* *Sudan’s Violent Crackdown on Protesters in Khartoum*, 17 November 2019, https://www.hrw.org/report/2019/11/18/they-were-shouting-kill-them/sudans-violent-crackdown-protesters-khartoum


of official data on the crime of enforced disappearance since Sudanese authorities deny its occurrence. Finally, the government is not the only entity that engaged in the practice of enforced disappearance, and perpetrators include non-State actors acting with the support of the State, making it harder in some instances to get accurate information on the commission of this crime.

a. Methods and Patterns of Enforced Disappearance in Sudan

While the magnitude of the practice is difficult to assess, in Sudan there are four discernible contexts in which enforced disappearance occurs. First, the Sudanese government has utilised enforced disappearance as a tool of repression and coercion against political and civil dissent, including its recent use of enforced disappearance against protesters since December 2018. Second, enforced disappearance has been used in the context of armed conflicts in Sudan. During war, summary executions are likely to have followed enforced disappearances, and the fate of many victims, even following the end of the armed conflict, remains unknown. Third, the abduction of women and children can qualify as a crime of enforced disappearance if carried out by the State, at the order of State agents or tolerated by the official authorities. Such abductions are usually carried out with the purpose of enslavement and sexual exploitation. Finally, enforced disappearances in Sudan occur in the context of migration. Sudan, being on a frequently used migratory route towards Europe, leaves many migrants vulnerable to enforced disappearance and other human rights violations.

i. Enforced Disappearances in the context of political oppression

The Sudanese authorities have employed enforced disappearance against political and civil dissidents with the purpose to intimidate, oppress and coerce any political opposition. The government has particularly targeted human rights defenders, journalists, political activists, opposition party members, students and persons belonging to marginalised communities.\(^\text{26}\) The government targeted these individuals due to the perceived or real threat they posed to the ruling regime.\(^\text{27}\)

The government relied heavily on the use of ‘ghost houses’ to hold political opponents in these private houses providing a perfect cover for torture and incommunicado detentions. The use of ghost houses appeared to have ceased some years ago, but a 2019 BBC report indicated that the government continued to use these houses to detain protesters.\(^\text{28}\)


\(^{27}\) Ibid.

private apartments where political detainees are allegedly ill-treated near Kober Prison in Khartoum North are nicknamed "Abu Ghraib".

In recent years, the government of Sudan has employed so-called ‘short-term disappearance’ to instil fear in the population. Short term disappearances take place when the individuals are “briefly detained by State authorities, who then refuse to acknowledge their detention, nor allow them to make contact with their family members or their counsel, depriving them temporarily of any kind of legal protection”. Many political activists disappeared and then were released after several days or weeks of being tortured and held in incommunicado detention. Ibrahim Al-Amin, a former Cabinet member, and Fadlallah Burma Nasser, a member of the banned Umma Party, were arrested in April 1993 by the security forces. While they were eventually released and spoke about their ordeal of being tortured for several weeks, the whereabouts of the others detained with them remain unresolved. In 2007 the UN Human Rights Council’s report discussed the disappearances of protesters noting that “following the events of 13 June 2007, 13 people were arrested during a protest against the construction of the Kajbar dam and four of them were held incommunicado for a week; to this day the whereabouts in detention of two of these people is unknown”. Finally, “between 19 December 2018 and 12 April 2019, hundreds of peaceful protesters, students, human rights defenders, political opponents, journalists and doctors were allegedly subjected to torture and inhumane conditions while detained incommunicado for months by the General Intelligence Service (GIS) in detention centres”.


13 April 2019 by the head of the TMC, credible sources have reported that some are still missing even after the TMC stated that all political prisoners were released. \(^ {34}\)

### ii. Enforced Disappearance in the Context of Armed Conflicts

The government has used enforced disappearances in the context of armed conflict throughout the various wars in Sudan, including the wars in Darfur, the Blue Nile, South Sudan, Nuba Mountains and Blue Kordofan. The primary target was usually the local population thought to be sympathetic or cooperating with rebel groups fighting against the government. The 1995 UNWGEID’s report highlighted the large number of disappearances in Toror village in the Nuba Mountains, transmitting an urgent request of 249 cases of disappeared for action to the Sudanese government. \(^ {35}\) The report noted that “it is suspected that the villagers have been taken to one of the Government-controlled ‘peace camps’ in Umdurien, Agab or Umserdieba, but their relatives have received no information concerning their whereabouts since their abduction”. \(^ {36}\) From 1995 until 2001, the government of Sudan did not clarify the whereabouts of the 249 individuals. In its 2001 annual report, the UNWGEID reported that the government clarified the whereabouts of 192 of the 249 by stating that they had not disappeared but chose to voluntarily relocate to ‘peace camps’. \(^ {37}\)

The International Commission of Inquiry on Darfur set up to investigate crimes committed in Darfur documented a series of cases involving enforced disappearance of civilians by the security forces and the State’s Arab proxy militia known as the Janjaweed. \(^ {38}\) The Commission concluded that the Janjaweed carried out the abductions and enforced disappearance in the aftermath of the attack on a village. Further, the Commission determined that the government and the armed forces were responsible for the abductions and disappearances. \(^ {39}\) The Commission reported on the experience of women noting that women were victims of enforced disappearance and were raped or forced into sexual slavery. A pattern could be observed in which women were abducted and kept in Janjaweed camps for the purpose of

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\(^ {34}\) ibid.


\(^ {36}\) ibid.


\(^ {39}\) ibid paras. 395–402.
enslavement. Some were kept for as long as three months before they were released or managed to escape. However, many of these women remain missing.⁴⁰

During the conflict between South and North Sudan, many people disappeared from both sides. Following the Sudan People’s Liberation Army (SPLA) attacks on Juba in mid-1992, government forces reportedly arrested more than 230 persons from the police force, army, the prisons and the Wildlife Department and civilians on suspicion of working with the SPLA. Out of 230 people arrested, the government only acknowledged the arrest of 68.⁴¹ Addressing the fate of those 230 individuals, the UNWGEID noted: “It is feared that many of those who ‘disappeared’ may have died under torture or have been extrajudicially executed”.⁴²

Following an attack by rebel forces on 10 May 2008 in Khartoum, the government conducted massive arrests. People were arrested at public locations, and an unknown number of the detainees were reportedly transferred to locations outside Khartoum, such as Shendi towards the north of the capital and Port Sudan in the east of Sudan. Relatives of those arrested or disappeared reported that they were unable to get information on the whereabouts of their loved ones, and that the authorities refused to acknowledge that they are in detention. Those who tried to locate the detainees were harassed.⁴³

iii. Enforced Disappearances in the context of Abduction of Women and Children

In Sudan, the abduction of women and children can qualify as enforced disappearance in certain circumstances, including when the crime is carried out at the request of State officials, or with their tolerance or acquiescence, as well as when the authorities refuse to acknowledge the whereabouts of the individuals and/or do not take measure to prevent the crime and find those disappeared.

In Sudan, women and children are forcibly disappeared either with the aim to turn them into slaves and/or in the context of the armed conflict. The 1995 the UNWGEID reported instances of abduction of women and children noting that:

⁴⁰ ibid para. 342.


⁴² ibid.

[T]he Popular Defence Forces of the Government of the Sudan have abducted women and children in southern Sudan. These women and children are then reportedly taken to the north where they are compelled to work as slaves. It is alleged that this practice is particularly prevalent in western Bahr el Ghazal... Furthermore] in Khartoum and other cities in the north, security forces of the Government of the Sudan have abducted southern Sudanese children off the streets and have placed them in camps where they are given Arabic names, indoctrinated in Islam and forced to undergo military training. Although many of these children are orphans who are homeless, others have families and are reportedly abducted from their homes. It is estimated that thousands of children have disappeared in this manner.44

In Darfur, the International Commission of Inquiry established that the abductions were systematic and carried out by the Janjaweed with the acquiescence of the State. The report notes that: “In March 2004, Janjaweed and 150 soldiers reportedly abducted and raped 16 young girls in Kutum, North Darfur”.45 Similar reports of abductions and rapes allegedly took place in Tawila and its surrounding villages in North Darfur in February 2004; as well as in other areas of Darfur.46

Furthermore, a report by the Darfur Consortium claimed that the abductions are part of a systematic policy of ethnic cleansing.47 The report documented evidence that significant numbers of women are being abducted and subjected to rape, sexual slavery and forced labor by the Janjaweed.48 The report also stated that these abductions closely follow the pattern of the 14,000 people enslaved around 1983 to 2005 during the civil war in southern Sudan.49

iv. Enforced Disappearance in the context of Migration


46 ibid paras. 341–342.


49 ibid.
There is a direct link between enforced disappearance and migration. The UN WGEID in its 2019 report discussed how there is a direct connection between the two “either because individuals leave their country as a consequence of a threat or risk of being subjected to enforced disappearances there or because they disappear during their journey or in the country of destination.” The link between migration and ED is however not new. As early as 1984, the UN WGEID received reports and cases involving individuals who had fled their countries due to the threat of being subjected to enforced disappearance.

While enforced disappearance in general is difficult to study due to its very nature, this lack of information is expounded when it involves migration. Large numbers of migrants, the use of smuggling networks and unknown migratory routes, possible State involvement and cover-up, and migrants being afraid to report incidents along migratory routes make it tremendously difficult to track their whereabouts. The dearth of data on enforced disappearance of migrants has been compounded by the involvement of State officials and agencies along the migratory route through both anti-migration measures and through corruption and enriching of individual State officials.

Sudan functions both as a country of transit for migrants as well as a country of destination. Sudan is host to a large number of migrants and refugees from West Africa, Central Africa and the Horn of Africa. In 2015, Sudan hosted approximately 460,000 refugees and asylum seekers with nearly one quarter of them coming from Eritrea. As a transit country, a large number of migrants pass through Sudan into neighbouring States, especially Libya, through the use of well-organised, well-connected and collaborative network of transporters, warehouse


owners and financial facilitators. Sudanese authorities routinely engage in the arrest, detention and deportation of migrants despite the fact that they may qualify for protection as refugees. During that process, migrants and refugees face a serious risk of enforced disappearance at the hands or with the acquiescence of the Sudanese authorities.

In Sudan, an Eastern route that passes through the Kassala and Gederef areas, has been identified as a notorious zone of smuggling and trafficking. The smugglers take advantage of “large, poorly controlled refugee camps to avoid government interference”. Trafficking gangs also operate in refugee camps, notably Shagarab refugee camp in Eastern Sudan, where they kidnap and ransom people. The Sinai route is also a well-documented route for arms trafficking. However, the use of this route for human smuggling decreased in 2013 when Israel completed a 230-kilometre barrier on the frontier with Egypt, and Sudan strengthened its efforts to combat smuggling in part due to national security concerns regarding the arms trafficking along the route. Despite the slump in human smuggling along this route, there are reports of refugees and migrants who cannot pay their fees to smugglers along other routes being sold to the Rashaida and Bedouin trafficking networks, who control the Sinai route and ransom them for profit. A similar situation can be found in the Hajar area in eastern Sudan. A 2013 UNHCR press release acknowledged that the refugees disappearing from eastern Sudan are trafficking victims.

A 2014 Human Rights Watch report documented the torture of Eritreans in Sudan and Egypt at the hands of traffickers along the Sinai route in order to ransom money from their

55 ibid.


58 ibid.

59 ibid.

60 ibid.

61 ibid.

According to the report, Eritreans reported that “Sudanese police in the remote eastern town of Kassala, close to Africa’s oldest refugee camps, intercepted them near the border, arbitrarily detained them, and handed them over to traffickers, including at police stations.” The report also included an interview with a 28-year-old Eritrean man who described how the Sudanese police handed him over to traffickers in November 2011, and how he overheard the traffickers ask the police if the migrants in custody had families that could pay for their release. He would later suffer severe abuse at the hands of traffickers in Egypt.

Beside ED of migrants in the camps or en route to their final destination, refugees and migrants face harassment and abuses even in Khartoum. On 24 October 2011, Eritrean opposition journalist and refugee Jamal Osman Hamad was arrested in Khartoum and the Sudanese authorities disappeared him for eight weeks. He was “summoned by Sudanese security forces in Khartoum...and [was] held at an unknown location in the capital. His mobile phone [had been] switched off since his arrest and none of his colleagues or members of his family [had] been able to obtain any news of him.”

Refugees and migrants face the risk of disappearance not only from the State but also from smugglers and traffickers. State authorities can still be held accountable if they knew or should have known about the violations but failed to investigate and hold perpetrators responsible. The issue of State responsibility is further complicated by the corruption of officials who may assist the smugglers, traffickers and kidnappers in their operations and which may include the enforced disappearance of migrants.

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65 ibid.


67 ibid.

As of December 2013, Sudan had prosecuted 14 cases involving traffickers of Eritreans in eastern Sudan and prosecuted four police officials.\textsuperscript{69} Yet, as of January 2019, Sudan’s network of smugglers and traffickers and the corruption of State officials still endures.\textsuperscript{70} The numbers of those prosecuted also do not reflect the reality of the widespread corruption of officials and their association to these exploitative practices against migrants and refugees in Sudan. Testimonies from Shagarab describe, for instance, the very close relationship between the smugglers, security border guards and some of those working in the camp.\textsuperscript{71} According to a 2011 internal UNHCR report, whenever Eritreans in East Sudan identify the exact locations and identity of individuals abusing them to the police, no action is taken.\textsuperscript{72} There are also reports of Eritreans being issued Sudanese passports in order to travel to Turkey which may be further evidence of the involvement of State officials in smuggling operations.\textsuperscript{73}

These allegations of corruption and collusion between State officials and smugglers and traffickers raise the question of whether Sudan is responsible for the enforced disappearance of some of these migrants and refugees under the definition of enforced disappearance in international law. At the very least, Sudan is falling short on its positive obligation to investigate and punish the perpetrators. Further, the State is under an obligation to protect from enforced disappearance. By failing to do so, it runs the risk of being found liable when third parties are left to “act freely and with impunity to the detriment of rights recognized in the convention”.\textsuperscript{74}

Since 2014, the European Union has worked on pushing their anti-migration agenda through cooperation with countries in the South, known as the ‘Khartoum Process’.\textsuperscript{75} Mohamed

\textsuperscript{69} ibid.


\textsuperscript{72} ibid 15.


Hamdan, head of the notoriously abusive Rapid Support Forces in Sudan, declared publicly that his forces are assisting the European Union.\textsuperscript{76} This initiative reportedly started when EU representatives participated in an African Union Regional Conference that took place in Khartoum in October 2014, aiming at the creation of a collaborative approach to tackle human trafficking and people smuggling in the region.\textsuperscript{77} The initiative has brought much criticism of European powers as they were directly funding the security forces of Sudan who have committed numerous human rights violations.\textsuperscript{78} In July 2019, the EU suspended support through the Khartoum Process to authorities in Sudan. This was reportedly due to fear of aiding security forces responsible for violently repressing peaceful protests in the country.\textsuperscript{79}

5. The Perpetrators of Enforced Disappearance in Sudan

The security forces, militias and the police have been the main perpetrators of enforced disappearances in Sudan. The NISS\textsuperscript{80} has played a primary role, using enforced disappearance as a tool of oppression against political activists and human rights defenders. The National Security Act 2010 (NSA) which governs the conduct of the agency provided it with extensive powers to arrest, detain and interrogate suspects for purposes of national security.\textsuperscript{81} Further, the immunities that prevent the prosecution of perpetrators paved the way for impunity and barred the victims from obtaining justice. In July 2019, following the fall of Al-Bashir, the newly installed TMC passed the Miscellaneous Amendments Acts of 2019 that changed the name of the agency to General Intelligence Service and limited its previous powers, including restricting the agency’s power to arrest people and to carry out search operations.\textsuperscript{82}


\textsuperscript{77} Eltayeb (n 97).


\textsuperscript{80} The NISS changed its name in July 2019 to the General Intelligence Service following the overthrow of Omar Al-Bashir.


As discussed above, Sudan has been engulfed in internal wars since its independence. To disarm opponents, the Sudanese armed forces have forcibly disappeared people fighting against the government or deemed to be supporters of the opposition movements. The Armed Forces Act of 2007, Article 42 in particular, provides immunities for members of the military. Therefore, violations carried out by the armed forces have gone unpunished despite strong evidence that the armed forces were key players in the mass scale disappearances that took place in Toror village, Darfur and Juba. The International Commission of Inquiry on Darfur noted that:

The most serious cases of enforced disappearances involved the disappearance of civilians by security and intelligence apparatus, both civil and military. The Commission received credible information that several individuals were taken away by military intelligence or security operators. While some of these individuals subsequently returned, many remain unaccounted for. Those who did return have given credible testimony of the presence of many of those missing in unofficial and secret places of detention maintained by the security apparatus in different locations in the Darfur region.

Finally, the third perpetrators of enforced disappearances are armed militia that operate across the country. These militias have assisted in the operations of both the Sudanese armed forces and NISS (now GIS) and operate with the support or at least acquiescence and tolerance of the Sudanese authorities.

6. Victims of Enforced Disappearance

The crime of enforced disappearance victimises both the disappeared and their families and relatives. Article 24 of the ICPPED identifies a victim to be “the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance”. This broad definition allows for family and all who suffer direct harm to be considered victims of the enforced disappearance.

During the Al-Bashir era, no one seemed to be safe from the practices used by the government to terrorise its citizens. Human rights defenders, political opposition leaders and journalists were targeted for speaking out against the regime or seeking to enforce the rule of law and human rights. Other victims include civilians who found themselves caught on the wrong side of the armed conflict, women and children who became victims of abductions, and migrants.


and refugees who in the process of seeking a better life ended up being victims of enforced disappearances.

a. Political Opposition and Human Rights Defenders

Omar Al-Bashir ruled Sudan with an iron fist for a period of more than three decades. To keep hold of his power, Al-Bashir and the National Congress Party used enforced disappearances to silence political opposition and human rights activists challenging the government. In the spring of 2017, the government unleashed NISS to prevent yet another instance of unrest. Among those who were forcibly disappeared was Hafiz Idress Eldouma Abdelgadir, a human rights activist who worked to promote the rights of internally displaced persons who were arrested without a warrant by NISS; as of 2017 his family has not received any information about his whereabouts.85

b. Civilians

Many civilians have been targeted and become victims of enforced disappearances for simply belonging to the tribe opposing the government or being perceived as supporters of the rebels. In 1995, the majority of 323 victims of enforced disappearance were villagers who were abducted by the armed forces and taken to a government controlled peace camp.86 In 2005, the UN Commission of Inquiry into Darfur noted that “most serious cases of enforced disappearances involved the disappearance of civilians by security and intelligence apparatus, both civil and military... [D]uring a joint attack in March 2004 by the Janjaweed and Government armed forces on several villages around Deleij in the Wadi Saleh area of West Darfur, 300 people were seized and taken away by the Government forces. Almost half of these persons are still missing, and many are feared to have been killed.”87

c. Protesters

The Sudanese government has systematically resorted to forcibly disappearing and holding protesters incommunicado and in secret locations to instil fear into the population and stop


further protests. During the protests in 2008, NISS grabbed people from their homes and public places for simply exercising the right to protest. When the relatives tried to obtain information from NISS, they were intimidated and were subject to being arbitrarily arrested themselves.\(^88\) The revolution that led to the downfall of Al-Bashir resulted in several dozen people being forcibly disappeared. According to a report by Physicians for Human Rights during the 2019 June 3\(^{rd}\) massacre dozens of protesters were disappeared by the security forces.\(^89\) As of now, about 12 people are still reported missing. The mother of Ahmad Mohamed Mahmoud when speaking of her son said he was a university student who used to go to the sit-in every day to join his colleagues, who took to the streets to demand their legitimate rights. He disappeared on June 3\(^{rd}\) 2019, and as of today he has still not come back home.\(^90\)

\textit{d. Migrants}

Migrants are at high risk of becoming victims of enforced disappearances. Many leave their home country as they are being targeted by their own governments and then they are further at risk of becoming victims en route to their final destination. The disappearances of migrants, although in most instances carried out by non-State actors, occur with the implicit or explicit authorisation or support of individuals operating in their capacity as State officials. A trafficking network has been identified in Egypt and Sudan involving smugglers and local officials who work together to capture and sell Eritrean migrants.\(^91\) In 2013, UNHCR reported a rise in the abductions and disappearances of mainly Eritrean refugees, allegedly involving border tribes in Eastern Sudan.\(^92\)

The above-mentioned migrants are not the only victims. The relatives of the disappeared are themselves victims of enforced disappearance because of the suffering they endure while looking for their loved ones, not knowing what happened to them, whether they are still alive or dead or if they will ever return home. Some relatives who report the


\(^{90}\) Al Adwaa, \textit{The Search to find missing loved ones}. 31 December 2019, https://www.aladwaa.online/2019/12/31/the-search-to-find-missing-loved-ones/


22
disappeared persons to the authorities are often met with threats and intimidation and may be disappeared themselves. Most families have as a result stopped seeking assistance from the government and resorted to conducting their own searches to identify the fate of their loved ones.\textsuperscript{93}

Finally, most of the victims of enforced disappearances are men. Currently 177 pending cases reported from Sudan to the UN WGEID include only 5 women.\textsuperscript{94} However, given the level of underreporting of enforced disappearances the real numbers are thought to be higher. In any event, women, whether as direct victims or relatives of those disappeared, are particularly affected by enforced disappearances due to existing gender roles and structural discrimination\textsuperscript{95}. Men are usually the breadwinners and their disappearance negatively impacts the economic situation of the families, forcing women to seek jobs that expose them to further abuse. Women are often the ones that search for their loved ones but also tend to be ostracised or blamed for the disappearance of their loved ones.

7. The Legal Framework to Protect against Enforced Disappearance in Sudan

\textit{a. International Law}

The government of Sudan has yet to sign or ratify the International Convention on the Protection of all Persons from Enforced Disappearances. However, Sudan has ratified some regional and international conventions that provide for the protection of rights violated by the crime of enforced disappearance. Sudan ratified the International Covenant on Civil and Political Rights (ICCPR), the International Convention on Economic, Social and Cultural Rights (ICESR) and the Convention on the Rights of the Child (CRC).\textsuperscript{96} Each of these treaties prohibit the use of torture, stating that no one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.\textsuperscript{97} These instruments also prohibit arbitrary detention, incommunicado and secret detention, and provide for the right to life, fair trial rights and the right to recognition of a person before the law.

\textsuperscript{93} Information was shared with ACIPS during a meeting with victims from Sudan as part of the project to end enforced disappearances in Africa.


\textsuperscript{95} The UN Working Group on Enforced or Involuntary Disappearances, \textit{General Comment on women affected by enforced disappearance}, A/HRC/WGEID/98/2, 14 February 2013.

\textsuperscript{96} Sudan ratified ICCPR and ICESR on 18 March 1986, The CRC was ratified on 3 August 1990.

\textsuperscript{97} UHDR, Article 5; ICCPR, Article 7.
In 2018 the Human Rights Committee particularly noted concerns about the use of enforced disappearances by NISS against the political opposition, doctors, human rights defenders and protesters in Sudan. In its report, the Committee urged the government to resolve the cases of enforced disappearances by conducting investigations without delays and by providing reparations to the victims.98

The rights provided in the international instruments that protect persons from enforced disappearances are enshrined in Article 27 (3) of the Sudan Interim National Constitution and are an integral part of the Bill of Rights within the INC. The article further stipulates that: “legislation shall regulate the rights and freedoms enshrined in this Bill and shall not detract from or derogate any of these rights”. However, in August 2014, the UN Human Rights Committee noted: “...despite Article 27 of the Interim National Constitution of 2005, the rights protected by the Covenant have not yet been recognised and given full effect in the national legal framework”. The Committee was also concerned about the lack of clarity on the primacy of the Covenant over conflicting domestic law, including the rules concerning personal status, family law and penal law.99

b. Regional Law

Sudan became a party to the African Charter on Human and Peoples’ Rights in 1986. The Banjul Convention does not specifically prohibit enforced disappearances but Articles 4, 5, 6 and 7 are particularly relevant to prevent the occurrence of enforced disappearances. Article 4 protects the right to life; Article 5 prohibits the use of torture; Article 6 provides for a right to personal liberty and protection from arbitrary arrest. Article 7 outlines the right to a fair trial. Finally, Articles 1 and 2 specifically note the obligations of States to protect these rights and ensure that every citizen can enjoy them.

Several soft law instruments adopted by the African Commission guide States in the measures required to prevent and address violations of rights associated with enforced disappearances. These include the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines) which provide important safeguards to prevent the crime. Further, the Guidelines on the conditions of arrest, police, custody and pre-trial detention in Africa (the Luanda guidelines) urge governments to set up mechanisms to independently investigate instances of disappearances, among other crimes. Finally, the General Comment No. 3 on the right to life urges States to investigate cases of enforced disappearances and bring those responsible to justice.

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99 Human Rights Committee, 111th session (19 August 2014), Consideration of reports submitted by States parties under article 40 of the Covenant, (CCPR/C/SDN/4), para. 7.
In 2012, Sudan submitted the 4th and 5th reports to the ACHPR on the gains made on the promotion and protection of human rights. Reviewing the report, the Commission expressed concern over the prevalent use of torture in Sudan, and asked the government to appoint “an independent commission to investigate all extrajudicial executions, enforced disappearances and torture by the police and make public its findings.” The African Commission also noted that “every enforced disappearance violates a range of human rights including, the right to security and dignity of person, the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, the right to humane conditions of detention, the right to a legal personality, the right to a fair trial, the right to a family life and when the disappeared person is killed, the right to life.” The Commission also characterised enforced disappearance as a continuing violation of the applicant’s human rights. Currently Sudan has four reports overdue and has not submitted any reports on the progress of human rights since 2012.

While the African Commission has not decided on cases that involved enforced disappearance in Sudan, it considered and ruled on cases involving incommunicado detention. In Elgak, Hummeida and Suliman v Sudan, the ACHPR cited its decision on the incommunicado detention of 18 journalists from Eritrea and elaborated on the State’s responsibility to investigate. The Commission stated that “one cannot demand that the Complainants, or the victims or their family members assume the task of exhausting domestic remedies when it is up to the state to investigate the facts and bring the accused persons to court in accordance with both domestic and international fair trial standards.” The Commission then went on to decide that: “the Government of Sudan had ample notice about the alleged human rights violations, and should have accordingly taken the necessary steps to investigate the matter particularly since it has admitted that the Complainants were under the custody of the NISS for some time, and that it had enough information and notice to initiate investigation into the alleged violations.” The ACHPR went on to issue a decision on merits that requested the authorities of Sudan to pay adequate compensation to the complainants named in the communication and “investigate and prosecute all those persons who participated in the illegal incarceration and torture of the complainants”.

In the case of Abdel Hadi, Ali Radi & Others v Republic of Sudan, the ACHPR found that incommunicado detention violates Article 5 of the African Charter because, among other things, “holding a person in detention under conditions that are not in keeping with his dignity and pose a threat to his health amounts to cruel, inhuman and degrading treatment or

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101 JE Zitha & PJL Zitha (represented by Prof Dr Liesbeth Zegveld) v Mozambique (ACHPR) [81].

102 Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan, Comm No 379/09 (2014) (African Commission on Human and Peoples’ Rights) [142].
punishment.”103 The Commission then ordered Sudan to pay adequate compensation, initiate an effective and impartial investigation, amend the legislation incompatible with the charter and train security officers on custodial safeguards and standards on the prohibition of torture.104

c. Domestic Law

Sudanese law does not explicitly criminalise enforced disappearance. To date, there has been no prosecution of perpetrators accused of committing the crime of enforced disappearance. However, a few Sudanese laws criminalise behaviour that violate rights associated with enforced disappearances.

Torture is prohibited by several laws in Sudan, even if not in a way consistent with the international definition. The Constitutional Charter of 2019 prohibits torture.105 Recent legislative developments modified Article 4 of the Criminal Procedure Act to prohibit torture of an accused person and recognise that torture can be inflicted both physically and psychologically.106 Articles 161(1) and 162 of the Sudanese Criminal Law 1991 criminalise abduction and kidnapping respectively, but these provisions do not contain an explicit provision on enforced disappearance.

Additionally, there are several legal provisions that criminalise the use of secret detention and provide some level of protection to those arrested. Article 77 of the Criminal Procedure Act of 1991 (CPA) provides that the officer in charge of a detention shall, within a maximum period of twenty four hours, inform the Prosecution Attorney or Magistrate of the arrest, which occurs within the limits of the jurisdiction thereof.107 The initial appearance before the judge can be extended for a period of four days which provides opportunities for abuses, including torture and enforced disappearances.108 Further, Article 81 of the CPA provides for

103 Abdel Hadi, Ali Radi & Others v Republic of Sudan, Comm No 368/09 (African Commission) [74].

104 Ibid para. 93.


shall be kept, at every police station, an arrests register, in accordance with the prescribed form, and the officer in charge shall record thereon every case of arrest, within the limits of his jurisdiction.” Finally, Article 83 of the CPA 1991 provides that: “(3) An arrested person shall have the right to contact his advocate, and the right to meet the Prosecution Attorney, or the Magistrate; (4) An arrested person shall be placed into custody of the Police, which assumes arrest, or inquiry, and he shall not be transferred, or placed, in any other place, save upon the approval of the Prosecution Attorneys Bureau, or the court and (5) An arrested person shall have the right to inform his family, or the body to which he belongs, and contact the same, upon the approval of the Prosecution Attorneys Bureau, or the court”.

While the law provides for some level of protection from enforced disappearances, the safeguards mentioned above are grossly disregarded in many cases.

Additionally, many people still become victims mainly due to rampant impunity and lack of political will to stop the practice. Sudan has systematically failed to investigate grave human rights violations committed by State officials, including enforced disappearances. The lack of accountability is perpetuated by domestic legislation that shields officials from prosecutions.

Article 52(3) of the NSA 2010 provides members of the NISS and their associates with immunity from criminal and civil proceedings for acts connected with their official functions. This immunity can only be lifted by the head of the NISS.\textsuperscript{109} However, there are no known instances where immunity has been lifted for NISS guards who were alleged to have tortured or disappeared detainees.\textsuperscript{110}

As noted before, the armed forces and police are also shielded from legal responsibility through the Armed Forces Act of 2007\textsuperscript{111} and the Police Act of 2008. Article 45 of the Police Act prevents prosecution of police officers if they acted in good faith, and before any


prosecution is initiated, it requires an approval of someone at the Ministry.\textsuperscript{112} The Armed Forces Act has similar provisions requiring an approval of a commander before any legal action can be initiated against a member of armed forces.\textsuperscript{113}

Article 35 of the Sudanese Bill of Rights provides for a right to litigation noting that, “[t]he right to litigation shall be guaranteed for all persons; no person shall be denied the right to resort to justice.”\textsuperscript{114} However, many victims cannot exercise this right as the widespread use of immunities prevents them from seeking justice. The various UN bodies as well as the AU called on the government of Sudan to abolish the immunities.\textsuperscript{115} The Human Rights Committee when discussing the immunities noted that the result is widespread impunity for human rights violations, since it allows “harsh prison conditions, arbitrary arrest and detention, including incommunicado detention”, and permits “security officials to detain suspects for up to four and a half months without judicial review before charges are levied”.\textsuperscript{116} In fact, it has been recommended that the aforementioned provisions should be abolished.\textsuperscript{117}

\begin{itemize}
\item \textsuperscript{114} [URL: http://www.ilo.org/dyn/travail/docs/2148/Interim%20Constitution%20of%20Sudan%202005%20-%20Part%20Two%20-%20Bill%20of%20Rights.pdf]
\item The African Union High Level Panel on Darfur (AUPD), Darfur: The Quest for Peace, Justice and Reconciliation, PSC/AHG/2(CCIVII), 29 October 2009, xix, para. 25(c) and (d); 56-63, paras. 215-238; and 91, 92, para. 336.
\end{itemize}
In 2020, the new government amended several laws, including articles 50-53 of the 2010 National Security Act that prevents prosecution of NISS officials.\textsuperscript{118} Lifting of this immunity may allow victims to finally seek redress for their violations.

8. Challenges and Opportunities Regarding the Prevention and Protection against Enforced Disappearance

\textit{a. Challenges}

Sudan, like other countries in Africa, does not keep official records of persons who are forcibly disappeared as the authorities do not accept that the practice takes place. Civil society organisations until recently did not keep disaggregated data on the crime of enforced disappearance except the 20 people recorded missing by the missing initiative. Currently, the long-term data on enforced disappearances can be only accessed by cases reported to the UN WGEID. In its 2019 report, the Working Group noted 177 outstanding cases, including cases related to 5 women in Sudan and since its mandate commenced in 1980, the Working Group has received only 354 cases of enforced disappearances from Sudan.\textsuperscript{119}

However, the data provided by the UNWGEID offers a useful source of information on the commission of this crime in Sudan despite the fact that it does not reflect the scope of the practice in the country. Taking a closer look at the number of cases sent to the UN WGEID, we can see that they did not increase despite the surge of internal conflicts and higher number of protests in the 1990s and 2000s. For instance, in 1994 the UN WGEID received 6 cases, 3 cases in 1999, no cases in 2002, and 14 cases in 2006 (all from one incident).\textsuperscript{120} In the 2007 UN WGEID annual report, the Working Group expressed its concern on the underreporting of the crime happening in Sudan and specifically Darfur.\textsuperscript{121} Despite this challenge, knowledge on the nature of enforced disappearance is slowly increasing amongst national civil society and victims’ groups, which will result in better documentation of cases and higher reporting.

Enforced disappearance is a crime that requires some level of State involvement. However, in many countries the authorities deny the existence of such a practice and as a result there is very little political will to take positive measures to prevent it and to investigate and


\textsuperscript{119} OHCHR, WGEID Report 2019, https://undocs.org/A/HRC/42/40


prosecute those responsible. In Sudan, during the Al-Bashir regime, the political will was non-existent which is reflected in the lack of an adequate legal framework and policies to prevent and protect against this crime. On the contrary, legal measures are in place to shield the perpetrators from accountability through immunity laws.

In addition to the obstacles that victims face to access justice and reparations, there are no mechanisms in place in Sudan to assist relatives to search for those disappeared, or to provide other forms of support required by them. This situation has prompted victims and their families to organise themselves to search for their loved ones and advocate collectively for their rights.

b. Opportunities

Following the ouster of President Al-Bashir in April 2019, the newly appointed government led by Prime Minister Abdalla Hamdok has taken positive steps to deal with the legacy of massive human rights violations that took place in the past and during the “Sudan Uprising”. During the 3rd June 2019 massacre, the Rapid Service Forces attacked the protesters resulting in a large number of people being injured, killed, raped and dozens forcibly disappeared. The disappearances spurred the families into action, which resulted in the creation of the ‘Missing’ movement.122 ‘Missing’ is a community-based voluntary initiative aimed at helping to find the missing following the June 3rd protest dispersal and previous events.123 The movement coordinates efforts on the ground to look for the disappeared in hospitals, police stations and prisons, and they provide medical, psychological and legal support to the families.124 The ‘Missing’ movement has also undertaken legal actions, including documenting the disappearances and reporting them in police stations and sending complaints to the Attorney-General. But the Attorney General has yet to provide responses to these requests.125 The Missing movement also submitted legal complaints to the National Human Rights Commission asking the Commission to coordinate with the relevant authorities to locate the disappeared, investigate their whereabouts and the reasons behind their disappearance.126

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125 لقب في الذاكرة: أسئلة بلا إجابات للعائدين من الاختفاء القسري في السودان’ (n 135).

126 ibid.
In addition to the steps taken by the Missing Initiative, the public in general has demanded that the authorities reveal and investigate the whereabouts of the disappeared. Politicians and political parties have publicly condemned the use of enforced disappearances.

On 23 September 2019, the Sudanese Public Prosecutor, Abdullah Ahmad Abdullah, formed a committee to investigate the facts around those reported missing during and after the sit-in in front of the headquarters of the General Command in June 2019. Further, the Prime Minister set up a national investigation committee with a broader mandate to investigate the bloody attack of protesters by the Sudanese military on June 3rd and human rights violations that occurred. As of May 2020, however, the National Committee has yet to release its report and no justice has been delivered to the victims and their families.

Another positive development is the adoption of the 2019 Constitutional Charter. While the Charter does not explicitly criminalise enforced disappearance, it provides for prohibitions against torture and slavery and protections for fair trial rights. All of these could be used to combat enforced disappearance and the violation of rights associated with the crime.

The changes in law introduced in 2020 and in particular the amendments of Article 4(b) of the Criminal Procedure Act and Article 115(2) of the Criminal Law Act -to prohibit torture of the accused and recognition that torture can be both physical and psychological- are necessary steps to ensure that Sudanese laws are in compliance with its international law obligations. While not enough, these measures could signal a shift in the State’s position and its willingness to strengthen the protection of fundamental rights in the country.

127 A Protest in Sudan Demanding to Reveal the Fate of the Disappeared <https://www.alhurra.com/a/ظاهرة-في-السودان-تطالب-بكشف-مصير-الأشخاص-%d9%82%d8%b6%d9%8a%d8%a9-%d8%a7%d9%84%d8%a7%d8%ae%d8%aa%d9%81%d8%a7%d8%a1-%d8%a7%d9%84%d9%82%d8%b3%d8%b1%d9%8a-%d9%8a%d8%ac%d8%a8-%d8%a3%d9%86/> accessed on 1 December 2019.

128 إجراءات الخدمة: قضية الاختفاء القسري يجب أن تنتهي "صحيفة الركوبة" 6 September 2019 <https://www.arakoba.net/31320245/%d8%a7%d9%84%d8%a9%d8%b9%d9%8a%d8%b4%d9%8a-%d9%82%d8%b6%d9%8a%d8%a9-%d8%a7%d9%84%d8%a7%d8%ae%d8%aa%d9%81%d8%a7%d8%a1-%d8%a7%d9%84%d9%82%d8%b3%d8%b1%d9%8a-%d9%8a%d8%ac%d8%a8-%d8%a3%d9%86/> accessed on 16 December 2019.


9. **Relevant Stakeholders within Civil Society**

Numerous stakeholders in Sudan, mostly civil society organisations, are involved in initiatives geared towards the prevention and prosecution of enforced disappearances. The table below summarises these stakeholders with a brief description of their roles in and outside Sudan.

<table>
<thead>
<tr>
<th>Organisations</th>
<th>Brief Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Nubsud Human Rights Monitors Organisation (NHRMO)</td>
<td>NHRMO has been monitoring human rights violations committed against the civilian population in Southern Kordofan (SK) and Blue Nile (BN), Sudan, since 2011.</td>
</tr>
<tr>
<td>2. The African Centre for Justice and Peace Studies (ACJPS)</td>
<td>ACJPS is a non-profit, non-governmental organisation working to monitor and promote respect for human rights and legal reform in Sudan. The Arab Coalition for Sudan endeavours to create positive change in the lives of groups affected by armed conflicts; via reinforcement of the role of civil society in upholding justice, democracy, human rights, peace-making, defending the rights of the victims as well as to encourage comprehensive peaceful solutions to the internal conflicts.</td>
</tr>
<tr>
<td>3. Arab Coalition for Sudan</td>
<td>This is a Non-governmental organisation with online presence.</td>
</tr>
<tr>
<td>4. Sudanese Rights Group (Huqooq)</td>
<td>KODI is a National Non-Governmental Organisation (NGO) established in November 2005 through the involvement of key community representatives in the then unified Republic of the Sudan. The organisation is registered with the SRRA, since its inception, in Kauda, Nuba Mountains/South Kordofan, and in Juba, South Sudan, with the South Sudan</td>
</tr>
</tbody>
</table>
6. Darfur Bar Association (DBA)

Relief and Rehabilitation Commission (RRC) at the Ministry of Humanitarian Affairs, since 2011.

DBA is a Sudanese organisation working to protect rights and freedoms of all human beings. It was established in 1995 by a group of lawyers to protect, defend and advocate for victims of violence.

7. Sudan Unlimited

Sudan Unlimited supports Sudanese and South Sudanese who are working tirelessly to secure freedom, justice, peace and prosperity for Sudan and South Sudan.

8. Amnesty International

Amnesty International is a global movement of more than 7 million people who take injustice personally. We are campaigning for a world where human rights are enjoyed by all.

9. The Strategic Initiative for Women in the Horn of Africa (SIHA)

The Strategic Initiative for Women in the Horn of Africa (SIHA) was established in 1995 and is a regional network which undertakes research, capacity-building, sub-granting and advocacy on women’s rights.

Human Rights Watch investigates and reports on abuses happening in all corners of the world. We are roughly 450 people of 70-plus nationalities who are country experts, lawyers, journalists, and others who work to protect the most at risk, from vulnerable minorities and civilians in wartime, to refugees and children in need. We direct our advocacy towards governments, armed groups and businesses, pushing them to change or enforce their laws, policies and practices. To ensure
our independence, we refuse government funding and corporate ties. We partner with organisations large and small across the globe to protect embattled activists and to help hold abusers to account and bring justice to victims.

11. Front Line Defenders

Front Line Defenders was founded in Dublin in 2001 with the specific aim of protecting human rights defenders at risk (HRDs), people who work, non-violently, for any or all of the rights enshrined in the Universal Declaration of Human Rights (UDHR). Front Line Defenders address the protection needs identified by HRDs themselves.

12. REDRESS

Redress, is a human rights organisation based in London, England, that helps survivors of torture to obtain justice and reparation, in the form of compensation, rehabilitation, official acknowledgement of the wrong and formal apologies.

10. Conclusions

The authorities in Sudan have used enforced disappearances for decades in a variety of contexts, including during civil wars and periods of unrest with the aim to silence political opposition, submerge the population into submission or dispose of any critics challenging the political status quo. During the Al-Bashir era, the Sudanese government denied the use of enforced disappearances or blamed the practice on the opposition. As a result, there has been no official data on the crime of enforced disappearances nor a public registry to facilitate the search for the victims and assist the families to obtain information on their loved ones, to seek justice and to obtain reparations.

Further, Sudan lacks laws and policies to prevent and protect against enforced disappearances effectively. Sudan is not a signatory to the ICPPED, nor the UNCAT. Domestic law does not criminalise enforced disappearance nor torture in accordance with international law standards. The existing immunities and the lack of political will have prevented so far the
effective prosecution of the perpetrators of enforced disappearances, leaving victims with no remedies to seek justice and reparations.

11. Recommendations

a. Legal framework

Sudan should:

- Ratify the UN Convention for the Protection of All Persons from Enforced Disappearance
- Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol
- Ratify the 1st and 2nd Protocols to the International Covenant on Civil and Political Rights
- Ratify the Rome Statute of the International Criminal Court

b. Institutional and legal reforms

Sudan should:

- Repeal the existing immunities for perpetrators of human rights violations as outlined in the Police Forces Act of 2008, the National Security Act of 2010 and Armed Forces Act of 2007
- Reform its national legislation to comply with its international obligations and adopt domestic legislation criminalising enforced disappearances and torture in accordance with the international definitions of those crimes
- Take the necessary measures to prevent and terminate acts of enforced disappearance and ensure the rights to a prompt and effective judicial remedy as a means of determining the whereabouts of the victims
• Create a database to register victims of enforced disappearance
• Ensure that any person deprived of liberty is held only in officially recognized detention centres
• Provide accurate information on the detention of persons and their place of detention to the detainee’s family, counsel or other persons with a legitimate interest
• Ensure that the conditions of arrest, preliminary interrogation and detention of suspects comply with the principles of the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (the Robben Island Guidelines)
• Provide legal representation to those who cannot afford the services of a lawyer
• Take adequate measures to combat insecurity and violence and the excessive use of force by the police, GIS and other law enforcement bodies
• Develop a comprehensive programme of protection and support for victims and witnesses

C. Redress

Sudan should:

• Provide adequate redress to victims and their relatives, including restitution, compensation, rehabilitation, and satisfaction and guarantees of non-repetition
• Take the necessary measures to carry out effective investigations into enforced disappearance, including by removing immunities and any other legal obstacles that prevent accountability for this crime
• Adopt effective policies to search for the disappeared
• Ensure human rights training for relevant law enforcement officials, magistrates and judges